

Assembly Bill No. 274

Passed the Assembly September 10, 2009

Chief Clerk of the Assembly

Passed the Senate September 9, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 48000 and 48001 of, to add Section 48001.5 to, and to add Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of, the Public Resources Code, and to amend Section 45901 of the Revenue and Taxation Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 274, Portantino. Solid waste: landfills: closure plans.

Existing law requires an operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization (state board) based on the amount of solid waste disposed of at each disposal site. Commencing with the 1995–96 fiscal year, the act requires the California Integrated Waste Management Board (board) to establish the amount of the fee, as specified, and limits the fee to a maximum of \$1.40 per ton. The fees are required to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund, and the board is authorized to expend the money in the account, upon appropriation by the Legislature, to administer and implement the act.

This bill, on and after January 1, 2012, would authorize an operator of a solid waste disposal facility that is required to meet financial assurance requirements and is in operation on July 1, 2011, to elect to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund created by this bill.

The bill would require that a participating operator pay a fee of \$0.12 per ton per disposal site. The bill would require the fee to be collected in the same manner as the solid waste disposal fee described above, and require the board to fulfill certain administrative reporting requirements to the state board. The bill would also require that the fee be deposited in the fund and made available to the board for expenditure, upon appropriation by the Legislature, for postclosure activities and corrective actions not performed by any owner or operator of a solid waste landfill when the owner or operator fails to comply with the board's final order, the financial assurance mechanisms are inadequate to fund necessary compliance activities, the solid waste landfill was

operating pursuant to a valid solid waste facilities permit on or after January 1, 1988, and the board has first used and exhausted all immediately available financial assurance mechanisms provided by the operator.

The bill would require that the fee not be operative on and after January 1, 2012, unless the board received, on or before July 1, 2011, letters of participation in the State Solid Waste Postclosure and Corrective Action Trust Fund from landfill operators representing at least 50% of the total annual waste disposal tonnage in 2010, as determined by the board. The bill would make conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 48000 of the Public Resources Code is amended to read:

48000. (a) Each operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization which is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site.

(b) (1) The fee for solid waste disposed of shall be one dollar and thirty-four cents (\$1.34) per ton. Commencing with the 1995–96 fiscal year, the amount of the fee shall be established by the board at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents (\$1.40) per ton.

(2) On and after January 1, 2012, the amount of the fee established by the board pursuant to paragraph (1) shall be increased by twelve cents (\$0.12) per ton for each operator of a solid waste landfill that notifies the board that it elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to Article 2.1.

(c) The board shall notify the state board on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to paragraphs (1) and (2) of subdivision (b).

(d) The board and the state board shall ensure that all of the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the state board in accordance with this article.

(e) (1) The fee imposed by paragraph (2) of subdivision (b) shall not be operative on or after January 1, 2012, unless the board receives, on or before July 1, 2011, letters of participation in the State Solid Waste Postclosure and Corrective Action Trust Fund from landfill operators representing at least 50 percent of the total volume of waste disposed of in 2010.

(2) The board shall notify the state board, on or before August 31, 2011, if the fee imposed by paragraph (2) of subdivision (b) shall become operative, pursuant to paragraph (1).

SEC. 2. Section 48001 of the Public Resources Code is amended to read:

48001. The revenue from the fees paid pursuant to paragraph (1) of subdivision (b) of Section 48000 shall, after payment of refunds and administrative costs of collection, be deposited in the Integrated Waste Management Account, which is hereby created in the fund.

SEC. 3. Section 48001.5 is added to the Public Resources Code, to read:

48001.5. (a) The revenue from the fees paid pursuant to paragraph (2) of subdivision (b) of Section 48000 shall, after payment of refunds and administrative costs of collection, be deposited in the State Solid Waste Postclosure and Corrective Action Trust Fund, which is hereby created in the State Treasury.

(b) Fees, revenues, and all interest earned shall be available to the board, upon appropriation by the Legislature, to carry out the purposes of Article 2.1, including all of the following:

(1) Corrective action and postclosure activities pursuant to subdivision (b) of Section 48011.

(2) Administrative costs incurred by the board in implementing Article 2.1.

(3) Any startup costs incurred by the board in implementing Article 2.1 that were incurred before fees were paid pursuant to paragraph (2) of subdivision (b) of Section 48000.

SEC. 4. Article 2.1 (commencing with Section 48010) is added to Chapter 2 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 2.1. State Solid Waste Postclosure and Corrective Action Trust Fund

48010. (a) (1) An operator of a landfill maintain evidence of financial ability pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4, that is operating the landfill on July 1, 2011, and that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to this article, shall submit written notice to the board on or before July 1, 2011.

(2) An operator of multiple landfills that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund is required to submit written notice that includes all of the operator's operating landfills and all other landfills in which that operator has in common ownership.

(3) The board shall provide to the state board the name and address, and any other information necessary to administer and collect the fee imposed pursuant to paragraph (2) of subdivision (b) of Section 48000, of every operator of a landfill electing to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund on or before August 31, 2011.

(b) If an operator that is operating a landfill on July 1, 2011, submits a written notification to the board that it elects to participate after the trust fund fee goes into effect, the operator shall pay all trust fund fees applicable from January 1, 2012, and a 5-percent penalty before being allowed to participate.

(c) For new landfills that receive a solid waste facility permit after July 1, 2011, the operator's election to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund shall be submitted in writing to the board before the board concurs in the issuance of the permit pursuant to Section 44009.

(d) All elections to participate made by landfill operators pursuant to this section are final, binding, and irrevocable for those operators and their successors and assignees.

48011. (a) For the purposes of this article, "solid waste landfill" means a disposal site that is required to maintain evidence of financial ability pursuant to Part 4 (commencing with Section 43600) of Chapter 2 of Part 4.

(b) The board may expend money in the State Solid Waste Postclosure and Corrective Action Trust Fund to pay for corrective

action and postclosure activities that have not been performed by the owner or operator of a solid waste landfill, upon a determination by the board that all of the following conditions are met:

(1) The solid waste landfill owner or operator has failed to comply with a final enforcement order issued by the enforcement agency, the regional water board, or the board.

(2) The financial assurance mechanisms are inadequate to pay for the required corrective action or postclosure maintenance activities or both that action and those activities.

(3) The solid waste landfill was operating pursuant to a valid solid waste facilities permit on or after January 1, 1988, when the state's requirements for solid waste landfill financial assurances went into effect as a result of Assembly Bill 2448 of the 1987–88 Regular Session, and is required to have financial assurances pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4.

(4) The board has first used and exhausted all immediately available financial assurance mechanisms provided by the operator.

(5) The solid waste landfill owner and operator are otherwise unable or unwilling to pay, in a timely manner, for the required corrective action or postclosure maintenance activities or both that action and those activities.

(c) The board may adopt regulations, if necessary, setting forth additional criteria for making expenditures from the State Solid Waste Postclosure and Corrective Action Trust Fund.

(d) Notwithstanding Section 10295 of the Public Contract Code, a contract entered into by the board for the purposes of this article is not subject to approval by the Department of General Services.

(e) No liability or obligation is imposed on the state under this article, and the board shall not incur any obligation beyond the extent to which money is expended from the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to this article.

(f) The board shall, to the maximum extent feasible, recover from the landfill owner or operator the amount of money expended from the State Solid Waste Postclosure and Corrective Action Trust Fund, including a reasonable amount for any board contract administration costs and an amount equal to the interest that would have been earned on the expended funds. The board shall deposit all funds recovered pursuant to an action authorized by this section

into the State Solid Waste Postclosure and Corrective Action Trust Fund.

(g) The amount of any cost incurred by the board pursuant to this section is recoverable from the landfill owner or operator in a civil action brought by the Attorney General pursuant to Section 40432.

(h) The board may, consistent with Section 48023.5, impose a lien on the owner's or operator's assets or real property as an additional remedy to recover funds from the operator for expenditures from the State Solid Waste Postclosure and Corrective Action Trust Fund.

48012. After January 1, 2015, as part of the annual report required pursuant to Section 40507, the board shall report on expenditures from the State Solid Waste Postclosure and Corrective Action Trust Fund, the status of cost recovery actions, and any recommended statutory changes that are necessary to ensure adequate resources are available to carry out the purposes of the State Solid Waste Postclosure and Corrective Action Trust Fund.

48013. An operator of multiple landfills who is required to maintain evidence of financial ability pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4 and whose landfills are operating on July 1, 2011, shall include all other landfills in which that operator has in common ownership in the letter of participation.

SEC. 5. Section 45901 of the Revenue and Taxation Code is amended to read:

45901. All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Section 45051 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments in the following manner:

(a) The payments from the fees paid pursuant to paragraph (1) of subdivision (b) of Section 48000 of the Public Resources Code and related interest and penalties shall be transmitted to the Treasurer for deposit in the Integrated Waste Management Account in the Integrated Waste Management Fund.

(b) The payments from the fees paid pursuant to paragraph (2) of subdivision (b) of Section 48000 of the Public Resources Code and related interest and penalties shall be transmitted to the State Solid Waste Postclosure and Corrective Action Trust Fund.

Approved _____, 2009

Governor